

Message Text

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INFO OCT-02 ISO-00 HA-05 TRSE-00 AF-10 ARA-10 EA-10
EUR-12 NEA-10 CIAE-00 DODE-00 PM-05 H-01 INR-07
L-03 NSAE-00 PA-01 PRS-01 SP-02 SS-15 NSCE-00
SSO-00 USIE-00 INRE-00 /107 W
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E.O. 11652: N/A
TAGS: SHUM
SUBJ: 34TH SESSION HUMAN RIGHTS COMMISSION - TEXT OF
SWEDISH DRAFT CONVENTION AGAINST TORTURE

REF: A. GENEVA 788; B. USUN 081; C. GENEVA 098

FOLLOWING IS SWEDISH DRAFT INTERNATIONAL CONVENTION
AGAINST TORTURE:

QUOTE: DRAFT INTERNATIONAL CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.
(PREAMBLE TO BE ELABORATED).

ARTICLE 1

1. FOR THE PURPOSE OF THE PRESENT CONVENTION, TORTURE
MEANS ANY ACT BY WHICH SEVERE PAIN OR SUFFERING, WHETHER
PHYSICAL OR MENTAL, IS INTENTIONALLY INFLICTED BY OR AT
THE INSTIGATION OF A PUBLIC OFFICIAL ON A PERSON FOR SUCH
PURPOSES AS OBTAINING FROM HIM OR A THIRD PERSON INFORMA-
TION OR CONFESSION, PUNISHING HIM FOR AN ACT HE HAS COM-
MITTED OR IS SUSPECTED OF HAVING COMMITTED, OR INTIMIDAT-
ING HIM OR OTHER PERSONS. IT DOES NOT INCLUDE PAIN OR
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SUFFERING ARISING ONLY FROM, INHERENT IN OR INCIDENTAL TO,
LAWFUL SANCTIONS TO THE EXTENT CONSISTENT WITH THE STAN-
DARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS.

2. TORTURE CONSTITUTES AN AGGRAVATED AND DELIBERATE FORM
OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

ARTICLE 2

1. EACH STATE PARTY UNDERTAKES TO ENSURE THAT TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT DOES NOT TAKE PLACE WITHIN ITS JURISDICTION. UNDER NO CIRCUMSTANCES SHALL ANY STATE PARTY PERMIT OR TOLERATE TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

2. NO EXCEPTIONAL CIRCUMSTANCES WHATSOEVER, WHETHER A STATE OF WAR OR A THREAT OF WAR, INTERNAL POLITICAL INSTABILITY OF ANY OTHER PUBLIC EMERGENCY, MAY BE INVOKED AS A JUSTIFICATION OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

3. AN ORDER FROM A SUPERIOR OFFICER OR A PUBLIC AUTHORITY MAY NOT BE INVOKED AS A JUSTIFICATION OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

ARTICLE 3.

EACH STATE PARTY SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THE PRESENT CONVENTION, TAKE LEGISLATIVE, ADMINISTRATIVE, JUDICIAL AND OTHER MEASURES TO PREVENT TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT FROM BEING PRACTISED WITHIN ITS JURISDICTION.

ARTICLE 4.

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NO STATE PARTY MAY EXPEL OR EXTRADITE A PERSON TO A STATE WHERE THERE ARE REASONABLE GROUNDS TO BELIEVE THAT HE MAY BE IN DANGER OF BEING SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

ARTICLE 5.

1. EACH STATE PARTY SHALL ENSURE THAT EDUCATION AND INFORMATION REGARDING THE PROHIBITION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ARE FULLY INCLUDED IN THE CURRICULA OF THE TRAINING OF LAW ENFORCEMENT PERSONNEL AND OF OTHER PUBLIC OFFICIALS AS WELL AS MEDICAL PERSONNEL WHO MAY BE RESPONSIBLE FOR PERSONS DEPRIVED OF THEIR LIBERTY.

2. EACH STATE PARTY SHALL INCLUDE THIS PROHIBITION IN THE GENERAL RULES OR INSTRUCTIONS ISSUED IN REGARD TO THE DUTIES AND FUNCTIONS OF ANYONE WHO MAY BE INVOLVED IN THE CUSTODY OR TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY.

ARTICLE 6.

EACH STATE PARTY SHALL KEEP UNDER SYSTEMATIC REVIEW INTERROGATION METHODS AND PRACTICES AS WELL AS ARRANGEMENTS FOR

THE CUSTODY AND TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY IN ITS TERRITORY, WITH A VIEW TO PREVENTING ANY CASES OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

ARTICLE 7.

1. EACH STATE PARTY SHALL ENSURE THAT ALL ACTS OF TORTURE AS DEFINED IN ARTICLE 1 ARE OFFENCES UNDER ITS CRIMINAL LAW. THE SAME SHALL APPLY IN REGARD TO ACTS WHICH CONSTITUTE PARTICIPATION IN, COMPLICITY IN, INCITEMENT TO OR AN ATTEMPT TO COMMIT TORTURE.

2. EACH STATE PARTY UNDERTAKES TO MAKE THE OFFENSES REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE PUNISHABLE BY LIMITED OFFICIAL USE

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SEVERE PENALTIES.

ARTICLE 8.

1. EACH STATE PARTY SHALL TAKE SUCH MEASURES AS MAY BE NECESSARY TO ESTABLISH ITS JURISDICTION OVER THE OFFENCES REFERRED TO IN ARTICLE 7 IN THE FOLLOWING CASES:

(A) WHEN THE OFFENCES ARE COMMITTED IN THE TERRITORY

OF THAT STATE OR ON BOARD A SHIP OR AIRCRAFT REGISTERED
IN THAT STATE;

(B) WHEN THE ALLEGED OFFENDER IS A NATIONAL OF THAT
STATE;

(C) WHEN THE VICTIM IS A NATIONAL OF THAT STATE.

2. EACH STATE PARTY SHALL LIKEWISE TAKE SUCH MEASURES AS
MAY BE NECESSARY TO ESTABLISH ITS JURISDICTION OVER THESE
OFFENCES IN CASES WHERE THE ALLEGED OFFENDER IS PRESENT
IN ITS TERRITORY AND IT DOES NOT EXTRADITE HIM PURSUANT
TO ARTICLE 14 TO ANY OF THE STATES MENTIONED IN PARAGRAPH
1 OF THIS ARTICLE.

3. THIS CONVENTION DOES NOT EXCLUDE ANY CRIMINAL JURIS-
DICTION EXERCISED IN ACCORDANCE WITH INTERNAL LAW.
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ARTICLE 9.

EACH STATE PARTY SHALL GUARANTEE TO ANY INDIVIDUAL WHO
ALLEGES TO HAVE BEEN SUBJECTED WITHIN ITS JURISDICTION
TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREAT-
MENT OR PUNISHMENT BY OR AT THE INSTIGATION OF ITS
PUBLIC OFFICIALS, THE RIGHT TO COMPLAIN TO AND TO HAVE
HIS CASE IMPARTIALLY EXAMINED BY ITS COMPETENT AUTHORITIES
WITHOUT THREAT OF FURTHER TORTURE OR OTHER CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT.

ARTICLE 10.

EACH STATE PARTY SHALL ENSURE THAT, EVEN IF THERE HAS BEEN
NO FORMAL COMPLAINT, ITS COMPETENT AUTHORITIES PROCEED TO
AN IMPARTIAL, SPEEDY AND EFFECTIVE INVESTIGATION, WHERE-
EVER THERE IS REASONABLE GROUND TO BELIEVE THAT AN ACT OF
TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT HAS BEEN COMMITTED WITHIN ITS JURISDICTION.

ARTICLE 11.

1. EACH STATE PARTY SHALL, EXCEPT IN THE CASES REFERRED
TO IN ARTICLE 14, ENSURE THAT CRIMINAL PROCEEDINGS ARE
INSTITUTED IN ACCORDANCE WITH ITS NATIONAL LAW AGAINST
AN ALLEGED OFFENDER WHO IS PRESENT IN ITS TERRITORY, IF
ITS COMPETENT AUTHORITIES ESTABLISH THAT AN ACT OF TORTURE
AS DEFINED IN ARTICLE 1 APPEARS TO HAVE BEEN
COMMITTED AND IF THAT STATE PARTY HAS JURISDICTION OVER
THE OFFENCE IN ACCORDANCE WITH ARTICLE 8.

2. EACH STATE PARTY SHALL ENSURE THAT AN ALLEGED OFFENDER
IS SUBJECT TO CRIMINAL, DISCIPLINARY OR OTHER APPROPRIATE
PROCEEDINGS, WHEN AN ALLEGATION OF OTHER FORMS OF CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT WITHIN ITS

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JURISDICTION IS CONSIDERED TO BE WELL FOUNDED.

ARTICLE 12.

EACH STATE PARTY SHALL GUARANTEE AN ENFORCEABLE RIGHT TO COMPENSATION TO THE VICTIM OF AN ACT OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT COMMITTED BY OR AT THE INSTIGATION OF ITS PUBLIC OFFICIALS. IN THE EVENT OF THE DEATH OF THE VICTIM, HIS RELATIVES OR OTHER SUCCESSORS SHALL BE ENTITLED TO ENFORCE THIS RIGHT TO COMPENSATION.

ARTICLE 13.

EACH STATE PARTY SHALL ENSURE THAT ANY STATEMENT WHICH IS ESTABLISHED TO HAVE BEEN MADE AS A RESULT OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT SHALL NOT BE INVOKED AS EVIDENCE AGAINST THE PERSON CONCERNED OR AGAINST ANY OTHER PERSON IN ANY PROCEEDINGS.

ARTICLE 14.

INSTEAD OF INSTITUTING CRIMINAL PROCEEDINGS IN ACCORDANCE WITH PARAGRAPH 1 OF ARTICLE 11, A STATE PARTY MAY, IF REQUESTED, EXTRADITE THE ALLEGED OFFENDER TO ANOTHER STATE PARTY WHICH HAS JURISDICTION OVER THE OFFENCE IN ACCORDANCE WITH ARTICLE 8.

ARTICLE 15.

1. STATES PARTIES SHALL AFFORD ONE ANOTHER THE GREATEST MEASURE OF ASSISTANCE IN CONNECTION WITH PROCEEDINGS REFERRED TO IN ARTICLE 11, INCLUDING THE SUPPLY OF ALL EVIDENCE AT THEIR DISPOSAL NECESSARY FOR THE PROCEEDINGS.

2. THE PROVISIONS OF PARAGRAPH 1 OF THIS ARTICLE SHALL NOT AFFECT OBLIGATIONS CONCERNING MUTUAL JUDICIAL ASSISTANCE EMBODIED IN ANY OTHER TREATY.

ARTICLE 16.

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STATES PARTIES UNDERTAKE TO SUBMIT TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, WHEN SO REQUESTED BY THE HUMAN RIGHTS COMMITTEE ESTABLISHED IN ACCORDANCE WITH ARTICLE 28 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (HEREAFTER REFERRED TO IN THE PRESENT CONVENTION AS THE HUMAN RIGHTS COMMITTEE), REPORTS OR OTHER INFORMATION ON MEASURES TAKEN TO SUPPRESS AND PUNISH TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT. SUCH REPORTS OR INFORMATION SHALL BE CONSIDERED BY THE HUMAN RIGHTS COMMITTEE IN ACCORDANCE WITH THE PROCEDURES SET OUT IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND IN THE RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE.

ARTICLE 17.

IF THE HUMAN RIGHTS COMMITTEE RECEIVES INFORMATION THAT TORTURE IS BEING SYSTEMATICALLY PRACTISED IN A CERTAIN STATE PARTY, THE COMMITTEE MAY DESIGNATE ONE OR MORE OF ITS MEMBERS TO CARRY OUT AN INQUIRY AND TO REPORT TO THE COMMITTEE URGENTLY. THE INQUIRY MAY INCLUDE A VISIT TO THE STATE CONCERNED, PROVIDED THAT THE GOVERNMENT OF THAT STATE GIVES ITS CONSENT.

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ARTICLE 18.

1. A STATE PARTY MAY AT ANY TIME DECLARE UNDER THIS ARTICLE THAT IT RECOGNIZES THE COMPETENCE OF THE HUMAN RIGHTS COMMITTEE TO RECEIVE AND CONSIDER COMMUNICATIONS

TO THE EFFECT THAT A STATE PARTY CLAIMS THAT ANOTHER STATE PARTY IS NOT FULFILLING ITS OBLIGATIONS UNDER THE PRESENT CONVENTION. COMMUNICATIONS UNDER THIS ARTICLE MAY BE RECEIVED AND CONSIDERED ONLY IF SUBMITTED BY A STATE PARTY WHICH HAS MADE A DECLARATION RECOGNIZING IN REGARD TO ITSELF THE COMPETENCE OF THE HUMAN RIGHTS COMMITTEE. NO COMMUNICATION SHALL BE RECEIVED BY THE HUMAN RIGHTS COMMITTEE IF IT CONCERNS A STATE PARTY WHICH HAS NOT MADE SUCH A DECLARATION.

2. COMMUNICATIONS RECEIVED UNDER THIS ARTICLE SHALL BE DEALT WITH IN ACCORDANCE WITH THE PROCEDURE PROVIDED FOR IN ARTICLE 41 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND IN THE RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE.

ARTICLE 19.

IF A MATTER REFERRED TO THE HUMAN RIGHTS COMMITTEE IN ACCORDANCE WITH ARTICLE 18 IS NOT RESOLVED TO THE SATISFACTION OF THE STATES PARTIES CONCERNED, THE COMMITTEE MAY, WITH THE PRIOR CONSENT OF THE STATES PARTIES CONCERNED, APPOINT AN AD HOC CONCILIATION COMMISSION. THE PROCEDURES GOVERNING THIS COMMISSION SHALL BE THE SAME AS THOSE PROVIDED FOR IN ARTICLE 42 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND IN THE RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE.

ARTICLE 20.

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1. A STATE PARTY MAY AT ANY TIME DECLARE UNDER THIS ARTICLE THAT IT RECOGNIZES THE COMPETENCE OF THE COMMITTEE TO RECEIVE AND CONSIDER COMMUNICATIONS FROM INDIVIDUALS SUBJECT TO ITS JURISDICTION WHO CLAIM TO HAVE BEEN SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN CONTRAVENTION OF THE OBLIGATIONS OF THAT STATE PARTY UNDER THE PRESENT CONVENTION. NO COMMUNICATION SHALL BE RECEIVED BY THE COMMITTEE IF IT CONCERNS A STATE PARTY WHICH HAS NOT MADE SUCH A DECLARATION.

2. COMMUNICATIONS RECEIVED UNDER THIS ARTICLE SHALL BE DEALT WITH IN ACCORDANCE WITH THE PROCEDURE PROVIDED FOR IN THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND IN THE RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE.

ARTICLE 21.

THE HUMAN RIGHTS COMMITTEE SHALL INCLUDE IN ITS ANNUAL REPORT TO THE GENERAL ASSEMBLY A SUMMARY OF ITS ACTIVITIES

UNDER ARTICLES 16, 17, 18, 19 AND 20 OF THE PRESENT CON-
VENTION.

(FINAL CLAUSES TO BE ELABORATED).

END QUOTE.

VANDEN HEUVEL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: HUMAN RIGHTS, TEXT, ATROCITIES, PRISONERS WELFARE
Control Number: n/a
Copy: SINGLE
Draft Date: 25 jan 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA01083
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780037-0214
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780125/aaaaavcc.tel
Line Count: 392
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b0d1a1e0-c288-dd11-92da-001cc4696bcc
Office: ACTION IO
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 8
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 GENEVA 788, 78 USUN NEW YORK 81, 78 GENEVA 98
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3718580
Secure: OPEN
Status: NATIVE
Subject: 34TH SESSION HUMAN RIGHTS COMMISSION - TEXT OF SWEDISH DRAFT CONVENTION AGAINST TORTURE
TAGS: SHUM, SW
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/b0d1a1e0-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014